

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to adopt new Chapter 106, "Safety Standards for Children's Centers," Iowa Administrative Code.

The proposed amendment would establish safety and facility standards for children's centers. Iowa Code chapter 237B requires the Department to establish standards, but does not delegate regulatory or enforcement authority to the Department or any other state agency. Thus, these rules do not establish a certification or licensure process or provide for enforcement.

Iowa Code chapter 237B specifies that the standards established shall be broad facility standards for the protection of children's safety and not program standards or other requirements involving program development or oversight of the programs provided to the children served by children's centers. The proposed rules cover definitions; application of the standards; provision of basic needs; protection from mistreatment, physical abuse, sexual abuse, and neglect; record checks; seclusion and restraints; health; safety; emergencies; and buildings.

This amendment does not provide for waivers in specified situations because the rules do not require compliance and the Department has no enforcement authority.

Any interested person may make written comments on the proposed amendment on or before June 10, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

The Department will also hold a public hearing for the purpose of receiving comments on these proposed rules on Wednesday, June 10, 2009, from 9 to 10:30 a.m. at the Wallace State Office Building Auditorium, 502 East Ninth Street, Des Moines, Iowa. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Bureau of Policy Analysis and Appeals at (515)281-8440 in advance of the scheduled date to request that appropriate arrangements be made.

This amendment is intended to implement Iowa Code chapter 237B.

The following amendment is proposed.

Adopt the following **new** 441—Chapter 106:

CHAPTER 106

SAFETY STANDARDS FOR CHILDREN'S CENTERS

PREAMBLE

The intent of this chapter is to establish safety standards for facilities that meet the definition of "children's center" pursuant to Iowa Code chapter 237B. Chapter 237B requires the department to establish standards but does not delegate regulatory or enforcement authority to the department or any other state agency. Thus, these rules do not establish a certification or licensure process or provide for enforcement.

Iowa Code chapter 237B specifies that the standards established shall be broad facility standards for the protection of children's safety and not program standards or other requirements involving program development or oversight of the programs provided to the children served by children's centers. These rules cover definitions; application of the standards; provision of basic needs; protection from

mistreatment, physical abuse, sexual abuse, and neglect; record checks; seclusion and restraints; health; safety; emergencies; and buildings.

441—106.1(237B) Definitions.

“Chemical restraint” means the use of chemical agents including psychotropic drugs as a form of restraint. The therapeutic use of psychotropic medications is not considered chemical restraint.

“Child” means a person who is less than 18 years of age.

“Children’s center” means a privately funded facility that is designed to serve seven or more children at any one time who are not under the custody or authority of the department of human services, juvenile court, or another governmental agency and that offers one or more of the following services:

1. Child care.
2. Child care for children with a chronic illness.
3. Respite care.
4. Family support services.
5. Medical equipment.
6. Therapeutic day programming.
7. Educational enrichment.
8. Housing.

“Control room” means a locked room used for treatment purposes.

“Mechanical restraint” means restriction by the use of a mechanical device of a child’s mobility or ability to use the child’s hands, arms, or legs.

“Physical restraint” means direct physical contact required on the part of a staff member, volunteer, or others who perform duties under a subcontract with the children’s center to prevent a child from hurting self, others, or property.

441—106.2(237B) Application of the standards. These rules shall apply to all facilities that meet the definition of “children’s center” pursuant to Iowa Code chapter 237B. In the event that a children’s center is also subject to licensure, certification, registration, or regulation pursuant to another provision of law, those legal requirements shall take precedence over these rules.

441—106.3(237B) Providing for basic needs.

106.3(1) A children’s center shall provide the following for children in its care:

- a. Adequate shelter;
- b. Nourishing food and water; and
- c. Opportunities for adequate sleep, exercise, cleanliness, and health maintenance.

106.3(2) A children’s center shares responsibility for meeting these needs with the children’s parents, guardians, or other primary caretakers, depending upon the amount of time the child spends in the children’s center each day.

441—106.4(237B) Protection from mistreatment, physical abuse, sexual abuse, and neglect. The state of Iowa prohibits child abuse as defined in Iowa Code chapter 232, criminal assault, and other criminal acts of violence. A children’s center shall not use discipline that amounts to child abuse or a criminal act of violence.

106.4(1) A children’s center shall have written policies that:

- a. Prohibit mistreatment, physical abuse, sexual abuse, and neglect of children;
- b. Define types of discipline and the reasons discipline would be used; and
- c. Specify reporting and enforcement procedures for the children’s center.

106.4(2) Discipline policies shall be discussed with:

- a. Staff, volunteers, or others who perform duties under a subcontract with the children’s center; and
- b. Parents or guardians before children are admitted to the children’s center.

106.4(3) A children's center shall not employ or use as a volunteer or subcontractor any person who poses any threat to the children in the center's care.

106.4(4) A children's center shall have written policies related to:

- a. Children's communication with their parents, guardians, and other outside authorities.
- b. Children's ability to receive visitors who have been approved by their parents or guardians.
- c. Confidentiality and reasonable privacy for children. The children's center shall afford children and their families privacy and confidentiality unless doing so would jeopardize a child's health or safety.
- d. Children's ability to keep personal belongings that connect the children to their families and community, such as clothing, pictures, and other items.
- e. Children's ability to participate in normal community activities that have been approved by their parents or guardians.

106.4(5) A children's center shall not impose unreasonable rules and restrictions that prevent communication and connections with parents, guardians, other family members, or authorities.

106.4(6) A children's center shall share its written policies related to communication, visitors, personal belongings, and participation in community activities with a child's parents or guardians before a child is admitted to the children's center.

441—106.5(237B) Record checks.

106.5(1) A children's center shall conduct record checks for:

a. Any owner, director, staff member, volunteer, or other person who performs duties under a subcontract with the children's center and who:

- (1) Has direct responsibility for children, or
- (2) Has access to a child when the child is alone.

b. Anyone living in the children's center who is 14 years of age or older.

106.5(2) The record checks shall be conducted to determine whether the person:

- a. Has any founded child abuse reports;
- b. Has any founded dependent adult abuse reports;
- c. Has any criminal convictions; or
- d. Has been placed on the sex offender registry.

106.5(3) Every applicant for employment shall submit to the children's center a written, signed and dated statement that discloses:

- a. Any substantiated instances of child abuse, neglect, or sexual abuse committed by the person;
- b. Any substantiated instances of dependent adult abuse committed by the person; and
- c. Any convictions of crimes involving the mistreatment or exploitation of a child.

106.5(4) A children's center may request additional information from the central abuse registry or the Iowa department of public safety.

106.5(5) If a record of criminal conviction or founded child abuse or founded dependent adult abuse exists, the children's center shall evaluate the crime or founded child abuse or founded dependent adult abuse to determine whether or not the crime or founded child abuse or founded dependent adult abuse merits prohibition of employment or any voluntary or subcontracted position. The evaluation shall consider:

- a. The nature and seriousness of the crime or founded abuse in relation to the position sought,
- b. The time elapsed since the commission of the crime or founded abuse,
- c. The circumstances under which the crime or founded abuse was committed,
- d. The degree of rehabilitation, and
- e. The number of crimes or founded abuses committed by the person involved.

441—106.6(237B) Seclusion and restraints.

106.6(1) A children's center shall not physically restrain a child unless it is necessary to prevent the child from hurting self, others, or property. Physical restraint must be conducted in a standing position whenever possible. Prone restraint is prohibited.

106.6(2) A children's center shall not put a child into time-out seclusion for more than one hour. A child shall never be secluded in an area that is locked or out of the view of staff, volunteers, or others who perform duties under a subcontract with the children's center.

106.6(3) At no time shall a children's center use a control room, mechanical restraint, or chemical restraint.

441—106.7(237B) Health.

106.7(1) A children's center shall obtain, store, prepare, and serve food and water free from contamination.

106.7(2) A children's center shall have written health policies that include criteria for excluding a sick child from the center.

106.7(3) A children's center shall have written policies and procedures related to disease control and the use of universal precautions with the handling of any bodily excrement or discharge, including blood and breast milk. A children's center shall take precautions to prevent the spread of infectious and communicable disease.

106.7(4) A children's center shall seek immediate medical attention for a child when it is necessary to ensure that the child remains healthy.

106.7(5) A children's center shall have written policies and procedures to ensure that staff, volunteers, or others who perform duties under a subcontract with the children's center demonstrate clean personal hygiene sufficient to prevent or minimize the transmission of illness or disease.

106.7(6) A children's center shall be required to report to the department of public health any reportable disease.

106.7(7) A children's center shall have written policies on physical examination reports or health status statements for all children in the center's care.

106.7(8) A children's center shall have written policies and procedures for the dispensing, storage, authorization, and recording of all prescription and nonprescription medications.

106.7(9) A children's center shall ensure that a clearly labeled first-aid kit is available and easily accessible to staff, volunteers, or others who perform duties under a subcontract with the children's center at all times whenever children are in the center, in the outdoor play area, and on field trips. The kit shall be sufficient to address first aid related to minor injury or trauma and shall be stored in an area inaccessible to children.

106.7(10) A children's center shall have written policies on reporting illness or injury to parents or guardians. These policies shall be shared with parents or guardians before a child is admitted to the children's center. Incidents resulting in a serious injury to a child or significant change in health status shall be reported immediately to the parent or guardian.

106.7(11) A children's center shall have written policies on smoking and tobacco use that comply with Iowa state law.

441—106.8(237B) Safety.

106.8(1) A children's center shall maintain a staff-to-child ratio and follow safe practices that are based on the ages and needs of the children in care to ensure adequate supervision and child safety.

106.8(2) Poison control centers' telephone numbers shall be posted in prominent locations and readily available. All poisonous or caustic drugs or materials shall:

- a. Be plainly labeled;
- b. Be stored separately from other drugs in a specific, well-illuminated cabinet, closet, or storeroom;
- c. Be stored in a manner that prevents accidental or intentional ingestion; and
- d. Be accessible only to authorized persons.

106.8(3) A children's center shall have written policies regarding fishing ponds, lakes, or any bodies of water located on or near the center's grounds and accessible to children.

- a. All swimming pools shall conform to state and local health and safety regulations.
- b. Adult supervision shall be provided at all times when children are near or in the water.

106.8(4) A children's center shall have written policies regarding transportation of a child that ensure compliance with Iowa Code section 321.446 regarding child restraint devices.

- a.* Drivers of vehicles shall possess a valid driver's license.
- b.* Drivers shall not operate a vehicle while under the influence of alcohol, illegal drugs, or prescription or nonprescription drugs that could impair their ability to operate a motor vehicle.
- c.* All vehicles used for children's center activities shall be maintained in safe operating condition.

106.8(5) Animals kept on site shall:

- a.* Be in good health with no evidence of disease,
- b.* Be of such disposition as to not pose a safety threat to any person, and
- c.* Be maintained in a clean and sanitary manner.

106.8(6) Offensive or dangerous weapons and ammunition shall be kept under lock and key and inaccessible to children. When these weapons are used, a children's center shall have written policies regarding their purpose, use, and storage.

441—106.9(237B) Emergencies.

106.9(1) A children's center shall have written emergency plans for responding to evacuations, fires, tornadoes, floods, blizzards, other weather incidents, power failures, bomb threats, chemical spills, earthquakes, or other natural or man-made disasters that could create structural damage to the children's center or pose health or safety hazards.

- a.* The emergency plans shall include guidelines for responding to situations involving intruders within the children's center and grounds, intoxicated persons, lost or abducted children, and evacuations.
- b.* Evacuations shall be practiced periodically.

106.9(2) The emergency plans shall include procedures for annual training regarding the contents and implementation of the plans for staff, volunteers, or others who perform duties under a subcontract with the children's center.

106.9(3) A children's center shall have:

- a.* Written policies and procedures for medical and dental emergencies; and
- b.* Sufficient information and authorization to meet the medical and dental emergencies of children.

106.9(4) Emergency telephone numbers shall be readily available, including emergency telephone numbers for parents or guardians.

441—106.10(237B) Buildings. A children's center shall ensure that the facility and grounds, playground surfaces and other areas, and all related equipment are safe and free from hazards.

106.10(1) A children's center shall comply with requirements established by the fire marshal for the applicable type of occupancy and shall comply with any applicable additional fire safety requirements established by local ordinance, including fire inspections.

- a.* Smoke detectors shall be installed on all levels of the center.
- b.* The center shall be equipped with fire extinguishers.
- c.* The center's exits shall be unobstructed at all times.

106.10(2) A children's center shall be structurally sound. Any new facility or existing facility that is extensively renovated shall be constructed in compliance with applicable requirements of the state of Iowa building code established pursuant to Iowa Code chapter 103A and with any local building code in force at the time of construction.

106.10(3) A children's center located in a building built before 1960 shall conduct a visual assessment for lead hazards that exist in the form of peeling or chipping paint.

- a.* If the presence of peeling or chipping paint is found, the paint shall be presumed to be lead-based paint unless a certified inspector as defined in department of public health rules at 641—Chapter 70 determines that it is not lead-based paint.

b. In the absence of the determination that peeling or chipping paint is not lead-based, a children's center shall use safe work methods as defined by the state department of public health to eliminate human exposure or likely exposure to lead-based paint hazards.

These rules are intended to implement Iowa Code chapter 237B.